IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 21324 of 2004

Between:

1 M. Victor Vijay Kumar, S/o. Late M. Joseph, Attender,
Hope High School, Madanapalli, Chittoor District.
2 V. Sudha Rani, D/o. Late V. Phillips, Attender
Hope High School, Madanapalli, Chittoor District.

..... PETITIONERS

AND

1 The Regional Joint Director of School Education, Kadapa Region, Kadapa, Kadapa District.
2 The District Educational Officer, Chittoor, Chittoor district.
3 The Church of South India, Rayalaseema Diocese, Rep. by its Bishop Rt. Reve CBM Fredicks, C.S.I. Compound, Gooty, Anantapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass orders, particularly one in the nature of Writ of Mandamus, declaring the action of the Respondents in not approving the appointments of the petitioners as arbitrary, illegal, contrary to the Articles 14, 16 and 21 of the Constitution of India, and the spirit of the compassionate appointment scheme, and consequently direct the respondents to approve the petitioner's appointments and pay the salaries with effect from 17-9-2002.

Counsel for the Petitioners: MR.KASAJAGANMOHAN REDDY

Counsel for the Respondent Nos.1 and 2: GP FOR SCHOOL EDUCATION

Counsel for the Respondent No.3: --

The Court, at the admission stage, made the following :

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ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the respondents in not approving the appointments of the petitioners as arbitrary and illegal.

The brief facts that are necessary for the purpose of disposal of the writ petition may be delineated as follows:

The Church of South India, Rayalaseema Diocese is running several schools in four districts of Rayalaseema. The 1st petitioner's father, by name M. Joseph died in harness on 26.8.1998 while in service at L.M.C. Girls High School, Jammalamadugu, Kadapa District. His mother made a representation to the management and the authorities to provide employment to him on compassionate grounds. The 2nd petitioner's father V.Philips also died in harness on 21.11.1997 while working in L.M.C. Girls High School, Jammalamadugu, Kadapa District. She also represented to provide employment on compassionate grounds. The District Educational Officer called for proposals from the Management to appoint the petitioners on compassionate grounds. When the Management did not comply with the order of the District Educational Officer, the petitioners filed

W.P.No.14618 of 2000 and W.P.No.14658 of 2000 respectively which were disposed of directing the respondents 2 and 3 therein to ensure the appointment of the petitioners. When the said direction was not implemented, the petitioners filed Contempt Case before this Court whereunder, the 3rd respondent gave an undertaking to this Court to provide employment to the petitioners. Pursuant to the judgment of this Court, the 3rd respondent appointed the petitioners as Attenders at Hope High School, Madanapalle which is also under the management of the 3rd respondent. The Correspondent of Hope High School, Madanapalle sent proposals to the respondents 1 and 2 for approval of the petitioners' appointment. Surprisingly, the 1st respondent, who is the competent authority to approve the appointments, referred the matter to the Commissioner and Director of School Education who was pleased to direct the 1st respondent to approve the appointment as early as possible vide Proceedings in Rc.No.1084/D2-1/2003, dated 2.9.2004, but the 1st respondent has not passed any orders in spite of the orders of the Commissioner & Director of School Education. The management appointed the petitioners as Attenders with effect from 17.9.2002 after two rounds of litigation. They joined in their respective duties on 17.9.2002, but their appointments have not been approved till today. Hence, the writ petition has been filed.

The 1st and 2nd respondents filed counter affidavit admitting that the father of the 1st petitioner and the father of the 2nd petitioner died while working as employees in L.M.C. Girls High School. It is stated that for all the appointments made in the aided High School, the competent authority to accord approval is the Regional Joint Director of School Education. Initially, the 3rd respondent should have sought for prior permission to make appointment of the petitioners on compassionate grounds showing clear vacancies to them, but without following such procedure, the 3rd respondent made appointments straight away. The 3rd respondent was required to

submit additional particulars in his official letters dated 16.8.2003 and 2.9.2003, and he appointed the 1st petitioner in a clear vacancy and appointed the 2nd petitioner in the vacancy that arose due to the promotion of A.Akkulappa, as Record Assistant from the post of Attender overlooking two seniors in the list and hence, there is no clear vacancy of Attender to accommodate the 2nd petitioner. The official respondents could not approve the petitioners' appointments only for the reason that the 3rd respondent did not follow the due procedure in making appointments and promotions. After examining the entire proposals, the 1st respondent directed the 3rd respondent to appoint the petitioners in clear vacancies existing in the institutions in Cuddapah district as per the Resolution dated 9.9.2004. Soon after receipt of further proposals from the 3rd respondent in response to the letter, dated 26.11.2004, the 1st respondent would approve the petitioners' appointments. A report to this effect was also submitted to the Commissioner and Director of School Education by the 1st respondent in his letter, dated 26.11.2004. Hence, the 1st and 2nd respondents pray to dismiss the writ petition.

A reply affidavit has been filed by the 2nd petitioner stating that the contention that A.Akkulappa is junior to two other Attenders is incorrect in view of the fact that as per the seniority list filed by the respondents, the candidate at Sl.No.1 is unqualified and the 2nd candidate is working in Kadapa District which is a separate unit for the purpose of seniority and promotions. Therefore, the promotion of Akulappa cannot be said to be illegal and irregular. Therefore, she prays to allow the writ petition.

Heard the learned counsel for the petitioners and the learned Government Pleader for School Education for respondents 1 and 2 and perused the material on record.

The learned counsel for the petitioners has contended that the non-approval of the appointments of the petitioners by the 1st and 2nd

respondents is arbitrary and illegal in view of the fact that there is no justifiable ground in not approving their appointments. He has further contended that the 1st petitioner's appointment was made in a clear vacancy whereas the 2nd petitioner was accommodated in the vacancy caused due to promotion of Akkulappa and hence, he prays to issue necessary directions to the respondents.

On the other hand, the learned Government Pleader for School Education has contended that the 3rd respondent did not seek permission to make appointments of the petitioners on compassionate grounds, and without following due procedure, the 3rd respondent made appointments straight away. She has further contended that the appointment of the 2nd petitioner in the vacancy caused due to the promotion of Akkulappa cannot be taken into consideration in view of the fact that order of seniority has not been followed. Hence, she prays to dismiss the writ petition.

The petitioners herein originally filed W.P.No.14618 of 2000 and W.P.No.14658 of 2000 respectively, and this Court, by virtue of orders, dated 9.8.2002, directed the 2nd and 3rd respondent therein i.e. Church of South India and the District Educational Officer, Cuddapah to ensure that the petitioners are appointed in any suitable posts on compassionate grounds as per the Government Order as referred to, within a period of three months from the date of receipt of a copy of this order. Thereafter, the 3rd respondent herein passed a resolution appointing the 1st petitioner in the existing vacancy in the Hope High School as Attender whereas, the 2nd petitioner was appointed as Attender on compassionate grounds in the same school in the vacancy caused due to promotion of Akkulappa. Thereafter, the Director of School Education, Hyderabad, in his proceedings, dated 2.9.2004 requested the 1st respondent to finalize the issue relating to approval of compassionate appointment of the petitioners as Attenders as early as possible in accordance with the rules, but the 1st respondent did not take any action. In a copy of the

letter addressed to the 3rd respondent, the 1st respondent requested the 3rd respondent to approve the compassionate appointments of the petitioners in the existing vacancy and resultant vacancy respectively and further requested the 3rd respondent to provide compassionate appointments to the petitioners as per their eligibility in the clear vacancies in the institutions existing in Caddapah District only.

The contention of the learned Government Pleader is that since the petitioners belong to Cuddapah District the compassionate appoints can be made only in the Cuddapah district in view of the fact that the father of the 1st petitioner and the father of the 2nd petitioner died while working in L.M.C Girls High School, Jammalamadugu, Cuddapah District and therefore, they cannot be appointed on compassionate grounds in another District. The contention of the learned counsel cannot be accepted in view of the Memo No.28140/PS-1/98 Education, dated 17.9.1998 issued by the Government of A.P. and in view of the fact that the institution in which the petitioners were appointed is under the same management of the 3rd respondent. Depending upon the vacancies, the 3rd respondent can appoint any person on compassionate grounds after obtaining necessary permission from the competent authority unless such an appointment is clearly barred by any specific rule or provision. In case of one G.B.Anil Prasad who was appointed as Record Assistant on compassionate grounds was approved by 1st respondent, vide proceedings No.471/A3-2004, dated 11.3.2004. The case of the petitioners is also similarly situated. Therefore, I am of the opinion that the respondents cannot discriminate the persons similarly placed. The petitioners are also entitled to the approval of their appointment.

The next contention is that the promotion of Akkulappa to the post of Record Assistant is irregular and there is no clear vacancy for

approval of the appointment of the 2nd petitioner. It is to be noticed that as per the consolidated seniority list of the 3rd respondent-school, admittedly Akkulappa stands at Sl.No.3. The case of the first senior most person I.Samuel who was working from 1973 was not considered since he was not qualified whereas, the case of the second senior most person K.C.D.Christopher who was appointed in 1984, though eligible for promotion as Record Assistant was not considered since he is working at C.S.I High School Cuddapah but not at Madanapalle. As per the Resolution of the 3rd respondent, it is clear that the District is the unit for the purpose of recruitment and promotions. The Resolution of the Education Board passed by the 3rd respondent on 20.2.2004 at Gooty, Ananthapur District was communicated to the District Educational Officer, Cuddapah on 9.9.2004 with a request to grant permission to fill up the existing vacant posts. Therefore, the next senior most person, A.Akkulappa was promoted as Record Assistant. Under the circumstances, the promotion of Akkulappa cannot be said to be in violation of seniority and is illegal. In the resultant vacancy of Akkulappa, the 2nd petitioner was appointed as Attender on compassionate grounds. Even in the Government Memo, dated 17.9.1998, the Government clarified that for maintaining the seniority in respect of teaching/non-teaching staff working in the Elementary/Secondary Schools under one management it can be reckoned taking the District as one unit. Such is the case, Akkulappa is the senior most person who is entitled to the promotion as Record Assistant and in the resultant vacancy of Akkulappa, the 2nd petitioner was appointed and perhaps that is the reason why the Commissioner and Director of school Education, in his proceedings, dated 2.9.2004 requested the 1st respondent herein to finalize the issue relating to approval of compassionate appointments of the petitioners herein as Attenders as early as possible in accordance with the rules. Necessary orders have to be passed by the 1st respondent in accordance with the rules. Therefore, without adverting to Akkulappa's promotion as Record

Assistant, the 1st respondent shall take appropriate decision with regard to the approval of the appointments of the petitioners in the vacancies of the 3rd respondent-institute at Madanapalle. It is also made clear that the compassionate appointments can be made in any of the schools irrespective of locations in different districts but under one management.

For the foregoing reasons, the writ petition is allowed directing the respondents to approve the appointments of the petitioners in accordance with the rules, within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case, there shall be no order as to costs.

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(K.C. BHANU, J.)

11th April, 2005

bcj

Note: Furnish copy in one week

B/o

bcj

To

1 The Regional Joint Director of School Education, Kadapa Region, Kadapa,

Kadapa District.
2 The District Educational Officer, Chittoor, Chittoor district.
3 The Bishop Rt. Reve CBM Fredicks, Church of South India, Rayalaseema Diocese, C.S.I. Compound, Gooty, Anantapur District.

4 Two C.Cs. to the Government Pleader for School Education, High Court Buildings, Hyderabad (OUT)

5 Two C.D. copies